

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA <i>ex rel.</i>	:	CIVIL ACTION
ELLSWORTH ASSOCIATES, LLP,	:	
	:	
v.	:	NO 19-cv-2553
	:	
CVS HEALTH CORPORATION, <i>et al.</i>,	:	<u>FILED UNDER SEAL</u>

[PROPOSED] ORDER

NOW, this day of , 2022, the United States having notified the Court under the False Claims Act (31 U.S.C. § 3720(b)(4)) that the United States is declining to intervene in this *qui tam* action, it is **ORDERED** that:

1. The **Second Amended Complaint shall be UNSEALED and served** upon the defendants by relator Ellsworth Associates, LLP.

2. **All other contents of the Court’s file in this action—including the United States’ five uncontested evaluation period extension applications (with accompanying briefs) dated August 2019, February 2020, August 2020, February 2021, and August 2021, as well as relator’s initial Complaint and Amended Complaint—shall remain SEALED** and not be made public or served upon the defendants or the relator, **except for** the following, which the relator will serve upon the defendants only after service of the Second Amended Complaint:

 (a) this Order; (b) the United States’ February 22, 2022 “Notice of Election to Decline Intervention”; and (c) the United States’ April 8, 2022 “Second Notice of Election to Decline Intervention.”

3. The seal shall be lifted as to all other matters that occur in this action *after* the date of this Order.

4. The parties shall serve all pleadings and motions filed in this action, including supporting memoranda, upon the United States, as provided for in 31 U.S.C. § 3730(c)(3). The United States may order any deposition transcript(s) and is entitled to intervene in this action, for good cause, at any time.

5. The parties shall serve all notices of appeal upon the United States.

6. All orders of this Court will be sent to the United States.

7. Should the relator, the defendants, or any later-named defendant(s) propose that this action be dismissed, settled, or otherwise discontinued, the Court will solicit the written consent of the United States before ruling or granting the Court's approval.

8. The Clerk shall serve a copy of this Order on **only** counsel for the United States and counsel for the relator.

TIMOTHY J. SAVAGE, J.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	
<i>ex rel.</i>	:	
ELLSWORTH ASSOCIATES, LLP,	:	
	:	CIVIL ACTION
Plaintiffs-Relator,	:	NO 19-cv-2553
v.	:	
	:	<u>FILED UNDER SEAL</u>
CVS HEALTH CORPORATION, <i>et al.</i>,	:	
	:	
Defendants.	:	

UNITED STATES' SECOND NOTICE OF ELECTION TO DECLINE INTERVENTION

Under the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the United States notified the Court on February 22, 2022 of the United States’ decision not to intervene in this action. Then, on March 28, 2022, the Court granted the relator leave to file a Second Amended Complaint, which the Court deemed filed on the same date and which remains under seal. The United States now further notifies the Court that it declines to intervene in this action as to the Second Amended Complaint.

Although the United States declines to intervene, it respectfully refers the Court to 31 U.S.C. § 3730(b)(1), which allows the relator to maintain the action in the name of the United States; providing, however, that the “action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.” *Id.* Therefore, the United States requests that, should relator Ellsworth Associates, LLP, any later-named relator(s), the defendants, or any later-named defendant(s) propose that this action be dismissed, settled, or otherwise discontinued, this Court solicit the written consent of the United States before ruling or granting its approval.

Furthermore, under 31 U.S.C. § 3730(c)(3), the United States requests that: (1) relator and the defendants serve on the government all pleadings filed in this action, as well as all notices of appeal; and (2) the Court send to the United States all orders that the Court issues.

The United States reserves its statutory rights: (1) to order any deposition transcripts; (2) to intervene in this action, for good cause, at a later date; and (3) to seek dismissal of the relator's action or claim(s).

Finally, the United States requests that only the following documents be unsealed: (1) relator's now-operative Second Amended Complaint (deemed filed on March 28, 2022); (2) the United States' February 22, 2022 Notice of Election to Decline Intervention; (3) this Second Notice of Election to Decline Intervention; and (4) the attached proposed Order (as entered).¹

The United States requests that all other papers currently on file in this action remain under seal, including all of the United States' submissions, because, in discussing the content and extent of the United States' investigation, such submissions were provided by law to the Court alone for the sole purpose of evaluating whether the seal and time for making an election to intervene should have been extended.

¹ The United States requests that relator's initial Complaint and Amended Complaint both remain under seal.

Respectfully submitted,

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